

REMARKS

This Proposed Amendment and Request for Reconsideration is filed in response to the Office Action dated March 28, 2006.

Claims 1-4 and 6-42 are pending in this application. By this Amendment, Claims 1, 4, 6, 8, 9, 14-18, 21, 35 and 36 are amended and Claims 2, 5, 13, 19, 20, 22-35 and 37-42 are cancelled, leaving Claims 3, 7, and 10-12 unchanged. Also, by this Amendment, Claims 43-51 are newly added. Claims 1, 3, 4, 6-12, 14-18, 21, 36, and 43-51 are presented for consideration by way of the present Amendment.

On page 2 of the Office Action, Claims 4, 19 and 21 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, with respect to Claim 4, the Examiner states that it is not clear whether the Applicants are attempting to recite the sub-combination of an integrally formed one-piece frame for an apparatus that supplies a pressurized fluid, or the combination of the integrally formed one-piece frame and a power unit having an engine. By this Amendment, Claim 4 is amended to overcome the Examiner's 35 U.S.C. §112 rejection of Claim 4. Accordingly, the Applicants respectfully request withdrawal of the 35 U.S.C. §112 rejection of Claim 4.

With respect to Claims 19 and 21, the Examiner states that the Applicants do not adequately define the angles being claimed. Claim 21 does not include any "angle" limitations, however, Claim 22 does and is similar to Claim 19. The Applicants will assume that the Examiner intended to include Claim 22 rather than Claim 21 in his 35 U.S.C. §112 rejection. By this Amendment, Claims 19 and 22 are cancelled, rendering the 35 U.S.C. §112 rejection of Claims 19 and 22 moot.

For purposes of clarity, the Applicants have amended Claims 1 and 16-18 to include reference characters identifying the respective angles claimed in Claims 1 and 16-18 in accordance with §§608.01(m) and 2173.05(s) of the MPEP. Newly-added Claim 43 also includes reference characters identifying the respective angles claimed in Claim 43 in accordance with the above sections of the MPEP.

On page 3 of the Office Action, Claims 1, 4-7, 16, and 19 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,923,627 issued to Wood et al. (hereinafter “Wood”). On pages 4-7 and 9 of the Office Action, Claims 2, 3, 12-15, 17, 18, 34, 35, and 38-42 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wood. On page 5 of the Office Action, Claims 8 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wood in view of U.S. Patent No. 4,742,838 issued to Muiza et al. (hereinafter “Muiza”). On pages 6, 7, and 10 of the Office Action, Claims 9-11, 20-22, 24-33, 36, and 37 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wood in view of U.S. Patent No. D465,624 issued to Kolichski et al. (hereinafter Kolichski).

Independent Claim 1 recites (underlining added for emphasis):

A frame for an apparatus that supplies a pressurized fluid,
the frame comprising:
a base that supports a power unit;
at least one leg that supports the base on a surface;
a handle configured to be used to move the frame from a
first location to a second location, the handle including
an upper end;
a first support member extending downwardly from
the upper end, the first support member forming an acute
included angle (C) with the base; and
a second support member extending downwardly
from the upper end, the second support member forming an
acute included angle (D) with the base;
wherein the first and second support members are integrally
molded as one piece with the base.

Wood does not teach or suggest a frame including a base, at least one leg that supports the base on a surface, and a handle including a first support member forming an acute included angle (C) with the base and a second support member forming an acute included angle (D) with the base. Rather, Wood discloses a portable air compressor assembly 1-300 including a roll cage 1-302 having a handle 1-312 and upright cage members 1-350, 1-352 extending downwardly from the handle 1-312 (see FIG. 8). Wood fails to teach or suggest that the cage members 1-350,

1-352 can form acute included angles, similar to angles C and D in FIG. 5 of the Applicants' Application, with the base (not numbered) supporting the storage tank 1-304.

On page 7 of the Office Action, the Examiner admits, with respect to now cancelled Claim 13, that Wood does not disclose a handle including a pair of downwardly-extending support members that form the acute included angles (C, D) with the base. The Examiner suggests, however, that "the Applicants have not disclosed that having the above-mentioned angles between said members solves any stated problem or is for any particular purpose." The Applicants refer the Examiner to page 6, line 23 – page 7, line 7 in the Application, in which the purpose for orienting the support members with respect to the base at acute included angles (C, D) is discussed. Specifically, with reference to FIG. 5 in the Application, by orienting the support members 62, 66 at acute included angles (C, D) with respect to the base 14, the legs 34A-D of a second frame 10b are allowed to slide over the handle 58 and legs 34A-D of the first frame 10a, and the legs 34A-D of a third frame 10c are allowed to slide over the handle 58 and legs 34A-D of the second frame 10b, therefore allowing the frames 10a, 10b, 10c to be stacked upon one another (see also FIG. 6).

The Examiner also suggests on page 7 of the Office Action, with respect to now cancelled Claim 13, that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Wood to include the above-mentioned angles between said members because such a modification would have been considered a mere design configuration which fails to patentably distinguish over Wood." When applying 35 U.S.C. §103, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. See MPEP §2141, and *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182 187 n.5 (Fed. Cir. 1986).

The Applicants respectfully submit that the Examiner's conclusion of obviousness is based on improper hindsight reconstruction. Specifically, the Applicants respectfully submit that the Examiner gleaned from the Applicants' Application, when making the 35 U.S.C. §103 rejection of now cancelled Claim 13, the suggestion or motivation used in concluding that it would have been obvious to one of ordinary skill in the art to orient the support members 62, 66 at acute included angles (C, D) with respect to the base 14 to facilitate the stacking of multiple

frames 10a, 10b, 10c upon one another. In addition, the Applicants respectfully submit that at the time just before the claimed invention was made, neither the motivation nor the desirability existed to configure a frame, as claimed in Claim 1, for a pressurized fluid delivery apparatus to facilitate stacking multiple frames upon one another. Indeed, there is no suggestion or motivation in Wood to configure the handle 1-312 or cage members 1-350, 1-352 in such a way as claimed in Claim 1 to facilitate the stacking of multiple roll cages 1-302 upon one another.

Wood also does not teach or suggest a frame including a base, at least one leg that supports the base on a surface, and a handle including first and second downwardly-extending support members, in which the first and second downwardly-extending support members are integrally molded as one piece with the base. Rather, from a review of FIG. 8 and column 15, lines 32-35 of the specification, Wood discloses that the roll cage 1-302 is made of steel tubing. As such, the base on which the storage tank 1-304 is supported is likely made from sheet metal and welded to the metal roll cage 1-302.

On page 4 of the Office Action, the Examiner (in the 35 U.S.C. §103(a) rejection of now cancelled Claim 2) suggests that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the frame by injection molding because the use of injection molding to form structures is well known in the art.” In determining the differences between the prior art and the claims, the question under 35 U.S.C. §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See MPEP §2141.02, and *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

The Applicants respectfully submit that the combination of elements recited in Claim 1 is not obvious in view of Wood, Muiza, Kolicheski, or any combination thereof. Specifically, neither Wood, Muiza, Kolicheski, nor any combination thereof teach or suggest a frame having first and second downwardly-extending support members forming acute included angles (C, D) with a base and integrally molding the base as one piece with the support members.

Accordingly, the Applicants respectfully request withdrawal of the 35 U.S.C. §102(e) rejection of independent Claim 1.

Claims 3, 4, 6-12, 14-18, 21, 36, and 43-45 are each ultimately dependent upon independent Claim 1, and are believed to be allowable based upon Claim 1 and upon other features and elements claimed in Claims 3, 4, 6-12, 14-18, 21, 36, and 43-45 but not discussed herein.

Newly-added independent Claim 46 recites (underlining added for emphasis):

A frame for an apparatus that supplies a pressurized fluid,
the frame comprising:

a base that supports a power unit;

at least one leg that supports the base on a surface;

a handle configured to be used to move the frame from a
first location to a second location, the handle including

an upper end; and

a pair of support members extending from the base,
each support member having a first end near the base and a
second end near the upper end of the handle;

wherein a first width between the respective first ends of
the support members is greater than a second width between the
respective second ends of the support members.

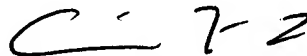
Neither Wood, Muiza, Kolicheski, nor any combination thereof teach or suggest a frame including a base, at least one leg that supports the base on a surface, and a handle including a pair of support members extending from the base, each support member having a first end near the base and a second end near the upper end of the handle, in which the first width between the respective first ends of the support members is greater than a second width between the respective second ends of the support members.

Accordingly, the Applicants respectfully submit that Claim 46 is allowable. Claims 47-51 are each ultimately dependent upon independent Claim 46, and are believed to be allowable based upon Claim 46 and upon other features and elements claimed in Claims 47-51 but not discussed herein.

CONCLUSION

In view of the amendments and remarks presented herein, it is respectfully submitted that the claims as amended are in condition for allowance. The Applicants kindly request that the Examiner telephone the undersigned in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,



Casimir F. Laska
Reg. No. 30,862

Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, Wisconsin 53202-4108
262.956.6507